

Dear Attorney Advisor Donovan and Others Involved,

I am writing you concerning the Framework for Next Generation 911 Development, and the proposed interim plan to begin SMS 9-1-1 response capabilities in Public Safety Answering Points (PSAP) instead of a full overhaul of the PSAP system employing a wider range of technology. I agree with the interim SMS proposal, but I believe that insomuch as it relies upon benefits to the disabled, the record should more fully rely on the survey data available from the EAAC.

In order to avoid judicial scrutiny and remand, an agency must show that its policy decision was not arbitrary and capricious.ⁱ An agency's decision will pass this deferential standard if "its path may be reasonably discerned" based on the record.ⁱⁱ However, a court will view critically any "post hoc rationalizations" presented in litigation, so the agency should demonstrate that before deciding it analyzed information available *in its records at the time of promulgation*.ⁱⁱⁱ

The FCC should bolster its record beforehand deciding upon the interim plan. The easiest way for FCC to do this would be to base its decision on the findings of the congressionally created Emergency Access Advisory Commission (EAAC). Congress explicitly allows the FCC to promulgate rules based upon the recommendations of the EAAC.^{iv} Although the EAAC is still considering policy recommendations, it has already published an extensive report based upon a survey conducted pertaining to this issue. The FCC should preserve these findings in the record should it decide to implement the interim SMS rulemaking.

The report on the EAAC survey lends great support to the efficacy of an interim SMS-based plan.^v The proposed rulemaking only mentions from the survey that 48.1% of respondents d prefer to text 911. However, 45.1% specified that SMS would be their preferred texting option. The report also shows that waiting for more advanced technological systems might not more positively affect many disabled users. For instance, between 86% and 98% of disabled respondents said that it was very important or somewhat important they be able to call 911 using the *same* device they use to call every day. Further, 61.8% of total respondents also said that cell phones were their preferred device to contact 911. Based upon data in the EAAC survey, the FCC could more ably defend implementation of the interim SMS rule.

Thank you for the opportunity to comment.

Sincerely,

Samuel Chaffin

ⁱ Administrative Procedure Act, 5 U.S.C. § 706(2)(A) (2006); See Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402 (1971).

ⁱⁱ Motor Vehicle Manufacturers' Association of the U.S., Inc. v. State Farm Mutual Automobile Insurance Company, 463 U.S. 29, 43 (1983).

ⁱⁱⁱ Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402 (1971). *See also* SEC v. Chenrey Corp 318 U.S. 80, 88 (1943).

^{iv} Communications and Video Accessibility Act § 106, 47 U.S.C. § 151 (2010).

^v THE EMERGENCY ACCESS ADVISORY COMMITTEE, REPORT ON EMERGENCY CALLING FOR PERSONS WITH DISABILITIES SURVEY REVIEW AND ANALYSIS (2011).